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LAW REFORM COMMISSION OF BRITISH COLUMBIA

MINISTRY OF ATTORNEY GENERAL

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LAW REFORM COMMISSION OF BRITISH COLUMBIA

ANNUAL REPORT
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LRC 95

The Law Reform Commission of British Columbia was established by the *Law Reform Commission Act* in 1969 and began functioning in 1970.

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TO THE HONOURABLE BRIAN R.D. SMITH, Q.C.
ATTORNEY GENERAL OF THE PROVINCE OF BRITISH COLUMBIA:

The Law Reform Commission of British Columbia has the honour to present its Annual Report for 1987/88. It outlines the progress made by the Commission during the period from April 1, 1987 to March 31, 1988.

I INTRODUCTION

The Law Reform Commission of British Columbia was created by the *Law Reform Commission Act*, S.B.C. 1969, c. 14 and it commenced operation in 1970. The function of the Commission is set out in section 2 of the Act:

> The Commission is to take and keep under review all the law in the Province including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law....

The Commission's approach to this mandate has been described in its previous Annual Reports.

During the period under review, the main focus of the Commission's work was on projects that are in their initial phases. As a result, more Working Papers than usual were prepared and circulated for comment. Working Papers were issued on the following topics:

Execution Against Shares
Deeds and Seals
Testamentary Intent and Unexpected Circumstances
Co-ownership of Land
The Land (Settled Estate) Act
Vicarious Liability Under the Motor Vehicle Act

We expect to submit final Reports on most of these topics in the coming year.

During the past year the Commission also submitted final Reports on the following topics:

The Buyer's Lien: A New Consumer Remedy
Fraudulent Conveyances and Preferences

II PERSONALIA

As presently constituted the Commission consists of five members: Arthur L. Close, Chairman; Hon. Ronald I. Cheffins, Q.C., Vice-Chairman; and Miss Mary Newbury, Professor Lyman R. Robinson, Q.C., and Dean Peter Burns, Q.C., Commissioners. This reflects a change in the composition of the Commission which occurred in September 1987 with the re-appointment of Professor Cheffins who had been a Commission member from 1983 to 1985 and served as Vice-Chairman for most of that period. All Commissioners, other than the Chairman, serve on a part-time basis.

A full list of past and present members of the Commission is set out in Appendix D.

III THE PROGRAM

A. DEVELOPING THE PROGRAM

1. Introduction

When the Law Reform Commission of British Columbia became operational in 1970 its first step was to develop a program of projects and studies which it intended to pursue. Developing its program involved a highly visible process of consultation with the Ministry of the Attorney General, the legal profession and the public.

Today, owing to the incremental nature of changes in the Commission's program, the process of developing it is much less visible. From time to time, therefore, we are asked about the way in which topics are selected for examination and report by the Law Reform Commission. The purpose of this portion of our *Annual Report* is to attempt, briefly, to describe the process.

2. Sources Of Projects

(a) The Attorney General

Under section 2 of the *Law Reform Commission Act* the Attorney General may refer specific subjects to the Commission for examination and report. Various Attorneys General have done so on a number of occasions over the years, and

about 30 percent of our Reports have their origins in such a reference. A project concerning family property was added to our program during the past year as the result of a reference from the Attorney General.

(b) Other Sources

(i) Suggestions from Outside the Commission

The Commission frequently receives suggestions for law reform measures or which identify areas of the law regarded as unsatisfactory. These suggestions emanate from the legal profession (both from individual practitioners and through the official organs of the bar such as the sections of the Canadian Bar Association), judges and the general public.

(ii) Projects Generated Internally

The Commission's legal staff monitors a large number of reports and legal periodicals. These are a fruitful source of potential projects. An article written by an academic lawyer in a learned journal may identify unsatisfactory aspects of the law which call for reform. Judges will occasionally find themselves applying a doubtful rule and the reasons for judgment may set out a cry (sometimes ringing, sometimes muted) for reform. We also maintain reciprocal exchange agreements with other law reform agencies throughout the world. Occasionally work being done by a law reform agency in, say, Australia, may alert us to the fact that our own law is deficient in the area under consideration.

(iii) Action on Suggestions

Once an area of the law has been identified as suitable for possible action by the Law Reform Commission, one of two things might happen. First, if the suggestion deals with a short, neat point which is unlikely to be controversial, we may proceed on it immediately with a Minor Report to the Attorney General.

Most often, however, the Commission's first step is to open a file on the suggestion as one of a large number of "subjects of interest." Once such a file has been opened, we start gathering material on the topic under consideration. We may

communicate with individuals knowledgeable on the particular topic to get their views on the desirability of reform in the area. We may canvas other jurisdictions to see if the particular subject has been perceived as a problem there and, if so, what the response has been.

Approximately once each year we review our program and, in particular, the subjects of interest files to identify those topics which might be suitable for addition to our program for active work.

3. Criteria For Selection

Given the numbers of the various sources of topics for potential Commission projects, it is necessary to pick and choose among them. What considerations underlie a decision to select one topic, in preference to another, for action? There is no single criterion, but a number of the factors relevant to this decision are outlined below.

(a) Credibility

The Commission and its professional staff is composed wholly of lawyers and the Commission has, generally, tended to confine its work to areas where lawyers are recognized as having particular credibility. Our specialty is the formulation of legal policy. If in a particular topic, the issues of legal policy are less significant than policy issues on which other disciplines have greater expertise, we would probably tend to defer. This is an issue on which we have commented at length in previous Annual Reports.

(b) Is There a Legal Solution?

Many issues brought to the Commission's attention do not turn on defects in the substantive law. Rather, the defects are in matters of administration and the institutions through which the law is applied. While there is no hard and fast position on this, the Commission tends to be cautious in approaching topics which appear to call for altered institutional arrangements rather than "self-executing" changes in black letter law.

(c) Balance in the Program

The Commission attempts to maintain a program which is balanced in a number of ways. There is a balance between large projects and small projects. There is a balance between projects which are intensely theoretical and projects which are intensely practical. There is also a balance in respect of subject matter. It would be unfortunate if the Commission were perceived as devoting its resources wholly to lengthy projects on one narrow area of law however valuable or important work in that area might be.

(d) Empirical Research

Empirical research is expensive and time-consuming and our ability to undertake it is very limited. If it is in the nature of a particular project that credible recommendations can only be made on the basis of empirical research which is beyond our means, we would usually not undertake it.

(e) Likelihood of Implementation

The issue of how far the program of a law reform agency should be shaped by implementation considerations is a difficult one on which views may, quite properly, vary widely. The view that has generally prevailed in this Commission over the years is that we should not be deterred from undertaking a study in which an important point of principle is involved by reason only that the government of the day may not share the Commission's sense of urgency with respect to reform in the area involved, or may be hostile to the recommendations likely to emerge. At the same time, we have been sensitive to the fact that the Commission is a publicly funded agency and this carries with it the responsibility to manage its resources in the way most likely to achieve results.

4. SUMMARY

As law reform agencies go, the British Columbia Commission has adopted a highly pragmatic approach to the way in which it selects its topics. Once a topic has been selected, however, the Commission has been less restrained and has been prepared to come up with highly innovative solutions and proposals. It should also be noted that the criteria which

are applied to the selection of Commission topics are not part of an articulated policy. They really emerge from an examination of the Commission's work over the years.

B. CARRYING OUT THE PROGRAM

1. Research And Writing

The research to carry out the program calls for time-consuming work by qualified people. This can be achieved by having the research done by personnel who are employed full-time or by persons with special expertise who are retained on a part-time or occasional basis. Although in its early years, the Commission relied heavily on outside consultants, our experience has led to a preference for the former approach. Consequently, most of the research and writing is now conducted by full-time members of the Commission staff.

2. The Consultation Process

The Commission makes a general practice of inviting comment and criticism of its research and analysis before submitting a formal Report on any particular subject. This process of consultation greatly assists the Commission in developing recommendations for the reform of the law that are both relevant and sound.

The chief means by which the Commission carries out this process is through the circulation of Working Papers to those who are knowledgeable, or who have a special interest in the subject under study. A Working Paper sets out the tentative views of the Commission and outlines the background against which these views were formed. Comment on all aspects of the Working Paper is invited. Occasionally, copies of a draft Report may be given limited circulation for comment, if the topic under consideration makes the wide circulation of a Working Paper inappropriate.

Whatever consultative mechanism is adopted, the Commission thoroughly re-examines its tentative conclusions in the light of the comment and criticism received. Final recommendations are developed accordingly.

C. CURRENT PROGRAM

The description below is limited to those projects which were active in the past year. Details of other projects may be found in earlier Annual Reports. Included as Appendix A is a table setting out all Reports which the Commission has made to date, and references to legislation in which the recommendations have been implemented in whole or in part. In Appendix B, another table sets out those matters which are now under consideration.

1. Debtor-Creditor Relationship Topics

(a) The Buyer's Lien: A New Consumer Remedy

In today's marketplace for consumer goods a retail seller will frequently receive payment for goods before they are actually delivered to the buyer. If the seller should, say because of his insolvency, fail to deliver the goods, the buyer's legal position may be very precarious. Whether he gets his goods or receives a few cents on the dollar as an unsecured creditor of the seller may turn on the highly technical question of whether title to specific goods has passed to the buyer. This is determined with reference to the *Sale of Goods Act*.

A typical fact pattern might involve a person who buys a refrigerator from an appliance dealer. The buyer pays the purchase price and arrangements are made that a refrigerator is to be delivered from the dealer's stock of such refrigerators a day or two hence. But no specific refrigerator is ever identified as the subject matter of the transaction. Before delivery takes place, the dealer becomes insolvent. Under the present law, the buyer is unlikely to get either his refrigerator or his money back, even though the dealer may have several such refrigerators in stock and the purchase price sits in the dealer's till.

Whatever the merits of this result may be in the context of commercial transactions, it has both the substance and appearance of unfairness when it defeats the reasonable expectations of the ordinary consumer buyer. While there is no way the consumer can be fully protected from losses arising in this way, it is possible to develop measures by which his legal position can be improved so as to reduce the likelihood of loss.

Such measures were the subject of a Report submitted to the Attorney General in August, 1987. In *The Buyer's Lien: A New Consumer Remedy* (LRC 93) it was recommended that the rights of the consumer be reinforced through the creation of a "buyer's lien." That lien would enable the buyer to assert continuing rights in the prepayment itself and in the seller's inventory of goods of a kind that were the subject of the sale.

(b) Fraudulent Conveyances and Preferences

A person who is unable to pay his debts in full, or who is faced with satisfying a substantial obligation, is often tempted to shield or hide his assets. He may attempt to pay some creditors in preference to others, or convey his property to a friend or relation and put it beyond the reach of persons who have claims against him.

Problems of this kind have been recognized by the law for hundreds of years and, in British Columbia, are addressed by both provincial and federal legislation. Two provincial Acts are primarily aimed at preventing debtors from dealing with their property in a manner which will prejudice their creditors. These are the *Fraudulent Conveyance Act* and the *Fraudulent Preference Act*. The federal *Bankruptcy Act* also contains provisions which have the same purpose.

The *Fraudulent Conveyance Act* is based on English legislation enacted in 1571, and its antiquity is obvious in a number of respects. Although the *Fraudulent Preference Act* is somewhat more recent, being little more than a century old, it too reveals its age.

Review of this area of the law is long overdue. One particular matter of concern is the overlapping nature of the provincial and the federal legislation. Not only is the operation of the two provincial acts inconsistent, but they also conflict with the provisions of the *Bankruptcy Act*.

In a *Report on Fraudulent Conveyances and Preferences* (LRC 94), submitted early in 1988, the operation of this legislation was thoroughly canvassed. For reasons set out in the Report, the Commission recommended the repeal of the *Fraudulent Conveyance Act* and the *Fraudulent Preference*

Act, and their replacement with modern legislation to be enacted as part of the *Court Order Enforcement Act*.

(c) Execution Against Shares

The *Study Paper on the Office of the Sheriff* published by the Commission in 1983 identified a number of substantive and procedural problems which arise out of the law which currently governs the seizure and sale of shares by an execution creditor. These problems were examined in greater detail in our *Working Paper on Execution Against Shares* (WP No. 55) which was circulated for criticism and comment in May, 1987.

The Working Paper tentatively concluded that there are a number of difficulties inherent in the current legislation which governs execution against shares and proceeded to develop detailed proposals for a new and modern scheme. The proposals were embodied in draft legislation to amend the *Court Order Enforcement Act*.

A significant feature of the proposals is that they focus special attention on shares in so-called "private companies" and provide more specific guidance as to the manner of seizure and the manner of disposition of seized shares. The latter aspect raises very difficult issues in achieving an appropriate balance between the rights of creditors, the judgment debtor and other shareholders. Proposals were also made concerning the seizure of a share where its beneficial ownership is in the judgment debtor but possession of the certificate and/or its registered ownership is in a third party such as a secured lender or stockbroker.

The Commission is currently considering the responses the Working Paper has stimulated and it continues to consult with interested parties. We hope to be in a position to commence work on our final Report later in 1988.

(d) Set-Off

When "A" attempts to enforce payment of a debt owing to him by "B," it is regarded as fundamentally fair that "B" should be entitled to have taken into account any money owing from "A" to "B." This is usually referred to as a right of

"set-off." In general, the body of law which governs set-off is satisfactory.

There are, however, instances in which the right of set-off is limited and, arguably, operates unfairly. Our research suggests that these instances reflect an imperfect understanding by modern courts of legal developments which took place in the nineteenth century. This research was embodied in a *Working Paper on Set-Off* (WP No. 54) which was distributed in March 1987. The Working Paper concluded with a proposal that a fair and modern law of set-off be restated in legislation.

Responses to the Working Paper have been received and considered by the Commission and the preparation of our final Report on this topic is now well advanced. We expect to submit it in the summer of 1988.

(e) Enforcement of Extra-Provincial Judgments

Most Canadian provinces have enacted a version of the *Uniform Reciprocal Enforcement of Judgments Act*. In British Columbia it appears as Part 2 of the *Court Order Enforcement Act*. This is not reforming legislation. It merely provides a summary procedure to achieve the same final result as the common law alternative of suing on an extra-provincial judgment for money. There are still a variety of defences which may be raised to defeat the enforcement of such a judgment.

The availability of these defences may be sensible with respect to judgments from outside Canada but, it may be argued, in a federation different considerations apply and judgments emanating from other Canadian provinces ought to stand on a somewhat different footing.

The aim of this project is to examine some of the implications of relaxing the rules respecting the recognition and enforcement of judgments from other Canadian jurisdictions and whether it would be possible or desirable for a single jurisdiction to proceed in this way. Our research and writing on this topic is now well advanced and we hope to be in the position to circulate a Working Paper before the end of 1988.

2. TRUST AND ESTATE TOPICS

(a) Testamentary Intent and Unexpected Circumstances

In previous Reports, the Commission has examined problems existing in the law of succession. One focus of this work has been to ensure that technical rules do not prevent the courts from giving effect to a testator's will. Even where the testator's original intent is beyond dispute, events may occur which render it impossible to give effect to his intent. A beneficiary may predecease the testator. Property disposed of by will may have become altered in form.

This project concerns a number of discrete rules of law in relation to wills and succession: ademption, equitable conversion, abatement, satisfaction, election, lapse, disclaimer, and distribution *per stirpes*. A thread which joins many of these rules is reflected in the title we have given this project. All too often the application of these rules will defeat the likely intention of a testator and the court has only limited ways of avoiding such a result.

In November, 1987 we issued a Working Paper (WP No. 57) which examined these rules. The Working Paper sets out a number of tentative proposals designed to modify these rules.

(b) The Land (Settled Estate) Act

The *Land (Settled Estate) Act* is a mid-Victorian horror. It is obsolete, awkward and archaic. It is based on nineteenth century English legislation aimed at a legal regime where large amounts of land were held in strict settlement. In the result, much of what the Act deals with simply has no application in British Columbia.

In March, 1988 we circulated a *Working Paper on The Land (Settled) Estate Act* (WP No. 59) which examined the Act and its current utility. The provisional conclusion reached in that Paper is that in almost every circumstance in which the Act might provide a remedy, the same (or superior) relief is available under another enactment. A relatively minor Amendment to the *Trust Variation Act* can make the redundancy of the settled estate legislation total. The Working

Paper proposes that such an amendment be made and the *Land (Settled Estate) Act* be repealed.

(c) Trustee Investments

In the absence of a contrary stipulation in the instrument from which he derives his power, the investments which may be made by a trustee are limited to those set out in section 15 of the *Trustee Act*. There are two features to be noted about section 15. First, it embodies a "list approach" and enumerates acceptable investments by name or description. Second, the kinds of investments permitted are of a relatively restricted kind.

This project will examine the issue of trustee investments and, in particular, whether our *Trustee Act* should abandon the "list approach" in favour of the more modern standard involving the approach a prudent individual would take to the conduct of his own affairs. The latter approach has found favour with a number of law reform bodies which have considered this issue. Active work has not yet commenced on this project.

(d) The Rule in Howe v. Lord Dartmouth

The Rule in *Howe* v. *Lord Dartmouth* is a particular instance of the trustee's duty to act impartially between beneficiaries. It requires a trustee to convert residuary personal estate which is of a wasting, future or reversionary nature, or which consists of unauthorized securities, into property of a permanent and interest bearing character.

This project will examine the scope and effect of the rule. Active work has not yet commenced.

3. CONTRACT LAW TOPICS

(a) Deeds and Seals

In British Columbia today most business arrangements are intended to take effect as simple contracts. Many such arrangements may, however, also be the subject matter of a deed. Simply affixing a seal to a document at the time it is executed may be sufficient to transform a simple contract into a deed. The effect of making a deed is that a whole body of

obscure law in relation to deeds suddenly becomes applicable to the transaction. Different rules of interpretation may apply to the transaction, different parties may be bound by it, a necessity for "delivery" arises, and there are different rules concerning its variation or discharge. In most cases where the parties execute a deed, it is likely that they have done so with no real understanding of the technical, legal implications of affixing a seal.

A *Working Paper on Deeds and Seals* (WP No. 56) was distributed in October 1987. In the Working Paper proposals are put forward which would have the effect of assimilating rights arising under deeds to those arising under simple contracts for most purposes. The Commission is in the process of considering the responses to the Working Paper and developing its final recommendations.

(b) Mistake and Tender

In *The Queen* v. *Ron Engineering and Construction (Eastern) Ltd.*, [1981] 1 S.C.R. 111, the Supreme Court of Canada considered the effect of an error made in a tender on a construction project. The person who made the tender discovered that an error in calculation had been made, which resulted in an unrealistically low bid on the contract. An unsuccessful attempt was made to vitiate the tender because of the error. The erroneous tender was held to be irrevocable, notwithstanding that the other party was aware of the error and there was no reliance on the tender.

Although this decision has attracted a significant amount of criticism, it was recently affirmed by the Supreme Court in *Calgary* v. *Northern Construction Co.*, [1987] S.C.C. No. 86 (Dec. 3, 1987). A project on this topic was added to our program in 1987 to examine the issues and interests at stake and to develop proposals for reform if appropriate.

4. REAL PROPERTY LAW TOPICS

(a) Co-Ownership of Land

There are two ways in which land may be co-owned by two or more persons: the joint tenancy and the tenancy in

common. This project brings together a group of issues and concerns that relate to co-ownership.

Both forms of co-ownership suffer from an outmoded legislative framework within which the rights of co-owners are regulated and asserted. Provisions which define the rights and remedies of co-owners are scattered through several statutes. The most important of these, the *Partition of Property Act*, is over 100 years old and its age is reflected in its antiquated language and concepts. Restatement, consolidation and simplification are called for.

One particular form of co-ownership, joint tenancy, raises special issues. The current rules respecting severance (the process whereby a joint tenancy may become a tenancy in common) can frequently lead to unfair results. They permit a "secret severance" which allows one co-owner, in essence, to deprive the other of his right of survivorship. They also may cause a severance in circumstances where no owner wants or intends that result, and no purpose is served by it.

Finally, ancient legal doctrines dictate that joint owners cannot hold unequal shares in the property. This means that the parties may be deprived of a potentially useful way of holding property.

These issues were all explored in a *Working Paper on Co-Ownership of Land* (WP No. 58) issued by the Commission in December, 1987. The pivotal feature of the Paper is draft legislation designed to provide a modern restatement of the rights that co-owners may assert with respect to profits and expenses associated with the land and of the remedies of partition and sale of the land. The draft legislation also incorporates changes to the substantive law arising out of our examination of the issues described above.

(b) Commercial Tenancy Act

This project will examine selected topics in the law of landlord and tenant as it applies to nonresidential tenancies. The focus of our work will be a critical examination of the *Commercial Tenancy Act*. Much of this Act is based on "received" English statute law and embodies obsolete concepts or employs obscure language rendering inaccessible important

rules of law.

There are also a number of important issues in the law relating to commercial tenancies that should be clarified and restated in legislation. Work is well advanced on this study and we hope to circulate a Working Paper for comment and criticism in the summer of 1988.

(c) Joint Project on Land Title Law

The Alberta Institute of Law Research and Reform has been the catalyst for a joint project on land title law. Participating are representatives of law reform agencies and land registry officials from the Western Provinces, the Territories and Ontario. We joined the project early in 1987 and are participating in co-operation with the Director of Land Titles for the Province.

The first stage of the joint project involves the preparation of draft materials under the auspices of the Institute. These will form the focal point for discussion and debate among the participating jurisdictions. What emerges from that process will dictate the course of further work.

(d) Floating Charges on Land

The floating charge on personal property is a relatively familiar type of business arrangement. It is a security device which gives a lender a security interest in a fluctuating mass of property, such as a borrower's inventory or equipment, which may change its identity over time. The essence of such an arrangement is that the borrower may sell or encumber this property in the ordinary course of his business, free and clear of the lender's interest, until such time as the charge "crystallizes." When a floating charge crystallizes (usually through some active step taken by the lender as a result of the borrower's default), the charge ceases to float. It descends and then becomes fixed on particular assets of the debtor.

The law has less experience with floating charges on land. This kind of arrangement is deliberately chosen by the parties, in preference to other forms of security, only in very special circumstances. A "fixed" charge on land is generally regarded as more secure. A floating charge on land may also

arise incidentally under a security agreement primarily aimed at personal property, but which is drafted broadly enough to charge "all the property" of the borrower. The floating charge on land has received limited recognition in our case law (see *Daon Development Corp.* v. *National Trust Co. Ltd.*, (1982) 39 B.C.L.R. 341).

There is a substantial measure of uncertainty as to the relationship between a floating charge on land and our Torrens system of land registration. Should the system attempt to accommodate the floating charge and, if so, how might this be done? To assist it in identifying the relevant issues and in providing appropriate advice in this area, the Commission constituted a special Advisory Committee.

The Committee started its work late in 1986 and submitted its final report to the Commission in November 1987. That report is now receiving internal consideration and we expect shortly to be taking decisions respecting the future course of this project.

5. Vicarious Liability Under The *Motor Vehicle Act*

To achieve its goals of reducing road accidents and protecting the victims of them, the *Motor Vehicle Act* imposes duties on a variety of persons. These include the owners and operators of motor vehicles. Obviously, the owner and operator of a vehicle are frequently the same person. But sometimes they are not. What is the legal position of the owner of a vehicle driven by another person in a way which gives rise to civil liability, or which violates provincial law?

The answer to that question is the concern of six loosely related provisions of the *Motor Vehicle Act*, namely sections 76 to 81. Broadly speaking, their aim is to impose liability on the owner of a vehicle for wrongs or offences that are committed by the operator. Liability of this kind, which arises from the relationship between the owner and the wrongdoer, is commonly referred to as "vicarious liability."

The very concept of vicarious liability is one which many people have difficulty accepting. The notion that only blameworthy conduct should attract punishment or liability is deeply ingrained. The use of vicarious liability in this context,

therefore, raises a number of important issues. Is the imposition of vicarious liability the best way of attaining the goals of the legislation? What should the limits of liability be? What kinds of defences should be available to an owner liable for the acts of another? What kind of conduct, if any, should excuse him from liability? What sorts of persons should the notion of owner encompass? Should ownership be determined with reference solely to the person who holds legal title to a vehicle?

A consideration of these issues was the subject of our *Working Paper on Vicarious Liability Under the Motor Vehicle Act* (WP No. 60) which we issued in February, 1988. In the Paper tentative proposals are made to modify the application of vicarious liability for offences by adopting alternative strategies and by clarifying the meaning of "owner" for both civil and penal liability under the Act.

6. Periodic Payment Of Personal Injury Awards

In *Andrews* v. *Grand & Toy*, [1978] 2 S.C.R. 229, Mr. Justice Dickson (as he then was) made the following observations concerning personal injury compensation:

> The subject of damages for personal injury is an area of the law which cries our for legislative reform.... When it is determined that compensation is to be made, it is highly irrational to be tied to a lump-sum system and a once-and-for-all award.
>
> The lump-sum award presents problems of great importance. ... [Y]et our law knows nothing of periodic payment. The difficulties are greatest where there is a continuing need for intensive and expensive care and a long-term loss of earning capacity.

Those observations were the catalyst for the addition to our program in 1978 of a project on periodic payments.

From 1978 to 1982, a considerable amount of time was devoted to gathering materials and carrying out background research. Work was started on the development of a periodic payment scheme, but it was discontinued in 1982. The discontinuance reflected a number of factors and influences, significant ones being a diminution of resources for Commission work resulting from Government expenditure restraint policies, and the difficulty in achieving a consensus within the Commission on certain central issues.

But calls for reform continue to be heard in this area. Most recently in *Olesik* v. *Mackin* (unreported) Mr. Justice Taylor stated:

> The difficult task of assessing Mr. Olesik's damages highlights serious inadequacies of the "lump sum" system under which the courts continue to be required to make awards in personal injury cases.
>
> ...
>
> Until such time as it becomes established, by legislation or appellate decision, that a judgment for personal injury damages may in special cases be for periodic payments over a plaintiff's actual lifetime, the courts must, unfortunately, do the best they can to make the present system work fairly.
>
> ...
>
> I wish in conclusion to emphasize that the assessment of damages in this case has involved the application of principles which seem sadly inadequate to the task, and to express the hope that legislative attention will be addressed to the problem of providing appropriate compensation for those in similar circumstances who suffer serious injury in motor vehicle accidents.

We have been persuaded that our former project should be reopened and, accordingly, a project on the periodic payment of personal injury awards has been restored to our program.

7. Extrinsic Aids To Statutory Interpretation

Section 8 of the *Interpretation Act* provides that a statute shall be given "such fair, large and liberal construction as best ensures the attainment of its objects." In ascertaining these "objects," however, the courts have historically, been confined largely to an examination of the legislation itself. As a general rule, a court was not permitted to consider other sources that might assist in discovering the "objects" of legislation or the "intention" of the legislature that enacted it.

Two sources that are frequently cited as being of potential assistance are the reports of legislative debates (Hansard) and the reports of Royal Commissions, law reform agencies and the like that may have preceded legislation. The rule that was widely accepted for many years is that the former are wholly inadmissible to aid interpretation and that the latter are admissible only to identify the "evil" sought to be remedied by the legislation.

A study on extrinsic aids to statutory interpretation was added to the Commission's Program in 1979 to examine the

desirability of modifying the law so as to allow these materials to be introduced, for what they are worth, as an aid to construction. Our research at that time revealed that a number of Canadian cases had emerged in recent years which tended toward a relaxation of the more rigid position described above. They held out the hope that judicial developments might eliminate any need for legislative intervention. Accordingly, in 1981 a decision was taken to discontinue active work but to maintain a "watching brief" on developments and to collect further materials as they become available.

The developments since 1981 were reviewed by the Commission in 1987. The trends evident 6 years earlier have continued. There has been what one judge referred to as "a wider use, but a cautious use, of...extrinsic material." The Commission believes that it has a useful contribution to make in this emerging area and we have therefore resumed active work on it.

8. Family Property

Late in 1983, a decision was taken by the Commission to re-enter the troubled area of family law. Among the largest and most difficult of the individual topics which were identified as suitable for potential action by the Commission was that of family property. As a preliminary step, we commissioned a preliminary survey of the then-current jurisprudence and practice surrounding the provisions of the *Family Relations Act* concerning family property. The research undertaken formed the basis of a *Study Paper on Family Property* that was published in 1985. The Study Paper contained no formal recommendations by the Commission for changes to the *Family Relations Act* although the Paper did point out some directions that reform might take.

The Study Paper was prepared issued with two aims in mind. First, as the introduction to the Paper stated, it was hoped that it might "lead to a more sophisticated understanding of, and approach to, the Act" which, in turn, might diminish the need for legislative change. Second, the Paper would provide a foundation for further Commission work in relation to family property. One area covered by the Paper that was subsequently brought forward as a formal report concerned

Spousal Agreements (LRC 87, 1986). In the past year two additional aspects of family property law were identified as appropriate for further work by the Commission.

(a) The Status of Property Acquired Before Marriage and Inherited Property

In November 1987 the Attorney General wrote to the Commission requesting that we review the law in relation to the property consequences of marriage breakdown, with particular emphasis on the status of property acquired before marriage and of inherited property. We have re-activated our study on this topic and work is now proceeding on it.

(b) The Division of Pension Rights on Marriage Breakdown

In January, 1988, we received a further request: to examine and report on the division of pension rights on marriage breakdown. We are currently in the process of attempting to identify all the issues that are relevant to this topic so that more precise terms of reference may be developed.

9. LEGAL ASPECTS OF HUMAN REPRODUCTION

The legal aspects of human reproduction have received increasing attention from the legal profession, the media and the general population. The issues surrounding surrogate motherhood have been the subject of particularly intense public interest and debate. It is a topic that has engaged the attention of law reformers in Ontario, Australia, and England. A question we confronted in 1987 was whether, given the background of law reform activity in other jurisdictions, this was an area in which we had a useful role to play.

The answer was inconclusive. While we recognized the arguments in favour of some form of legislative intervention in this area, we also perceived a number of obstacles to action. It was our collective view that it would be inappropriate to commit ourselves to a project at this time; our best course is to continue to monitor developments closely so the desirability of Commission involvement at some future date may be accurately evaluated.

10. SUBJECTS OF INTEREST

Preliminary research or the gathering of material regularly proceeds on a number of matters which are not yet part of the Commission's program or under active consideration for addition to it. In most cases the preliminary work is to determine if a particular topic is appropriate for formal inclusion in the program as a Commission project. Many of these matters which are under preliminary consideration arise out of particular suggestions made, and problems drawn to the Commission's attention, by the legal profession and members of the public.

IV ACTION ON COMMISSION RECOMMENDATIONS

In previous Annual Reports we have expressed our pleasure in the interest taken in our work by the Attorney General, as reflected in the implementation of recommendations contained in past Commission Reports. This interest continued during the past year. The 1987 session of the legislature saw two initiatives which carried forward Commission work and implemented recommendations made in five different Reports.

The first initiative was the enactment of new expropriation legislation. The *Expropriation Act*, S.B.C. 1987, c. 23 implements recommendations made by this Commission in its 1971 *Report on Expropriation* (LRC 5).

The second initiative was the introduction of the *Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42. It contained provisions to implement the recommendations made in the following Reports:

The Authority of a Guardian (LRC 78, 1985)
Performance Under Protest (LRC 81, 1985)
A Short Form General Power of Attorney (LRC 79, 1985)
Termination of Agencies (LRC 21, 1975)

Details of these recommendations may be found in the reports noted and in previous Annual Reports.

V THE AVAILABILITY OF COMMISSION PUBLICATIONS

All final Reports on major topics issued by the Commission are published in a typeset format, with the intention that they be available to the public. Our Annual Reports are distributed by the Commission and are available on request and free of charge so long as stocks last.

From time to time the Commission also submits minor Reports, in the form of a letter to the Attorney General. These minor Reports are usually reproduced in full as appendices to the Annual Report which covers the period in which the minor Report was made.

Crown Publications Inc. is responsible for the distribution of all Reports made by the Commission on particular topics. A nominal charge is made for copies of those Reports. Orders should be directed to:

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Crown Publications Inc. maintains a "notification list" and upon publication of a Commission Report, all persons on the list are so advised. Anyone who wishes to be added to that list should contact them.

The Commission is solely responsible for the distribution of its Working Papers. These documents are usually produced in limited quantities and our supplies of them are invariably exhausted by, or shortly after, their initial distribution. Usually we are unable to respond to requests either for copies of past Working Papers or to be placed on a mailing list to receive copies of all Working Papers.

VI ACKNOWLEDGEMENTS

A. COMMISSION STAFF

As we have pointed out in previous Annual Reports, our policy of doing the greater part of our research work internally, rather than relying on outside consultants, places a heavy burden of responsibility on the shoulders of our permanent staff. They invariably respond to the challenge with energy, enthusiasm and careful scholarship. We wish to express our sincerest thanks to all those individuals who, in the past year, contributed to our work in this way.

Our particular thanks go to Thomas G. Anderson, Counsel to the Commission, for the loyalty and industry he has devoted to the affairs of the Commission. As our senior staff member, he bears a heavy responsibility for the over-all direction of the Commission's program as well as carriage of specific projects.

We are also indebted to the other members of the Commission's legal research staff: J. Bruce McKinnon, Deborah M. Cumberford and Monika Gehlen.

Over the summer months two students worked with us. Tim Delaney, of the University of British Columbia Faculty of Law, and Michael Doherty of the University of Victoria Faculty of Law, undertook basic research on a number of topics and provided the Commission's full-time research staff with valuable assistance.

Our support staff also make a notable contribution to the work of the Commission. They bring intelligence and efficiency to their duties and share a concern that our work should be of the highest quality in every respect. Our support staff presently consists of Sharon St. Michael, Secretary to the Commission and Linda Grant, Clerk-Stenographer. We thank them for their efforts on our behalf.

B. JUDGES' LAW REFORM COMMITTEE

The Judges' Law Reform Committee is important to our operation. This Committee provides a continuing point of contact with the judiciary. The current members of the Commit-

tee are The Honourable Mr. Justice Macfarlane of the Court of Appeal (Chairman), The Honourable Mr. Justice Spencer, The Honourable Mr. Justice Bruce Macdonald, The Honourable Mr. Justice Lysyk and The Honourable Madam Justice Huddart of the Supreme Court, The Honourable Judge Cowan of the Vancouver County Court, and His Honour Judge Collings of the Provincial Court.

The members of the Committee assist us through responding to our Working Papers and other consultative documents and by calling to our attention defects in the law that they are well-situated to identify. They bring a unique perspective to bear on our work. The responses and advice which the Committee provides are invariably cogent and helpful. The work of the Judges' Committee plays a major role in the law reform process and we are immensely grateful to the individual members of the bench who give so generously of their time and energy to this end.

C. THE LAW FOUNDATION

Previous Annual Reports have described the generous response of the Law Foundation of British Columbia to the Commission's requests for funding to help sustain its operation. In the past year, the Foundation again provided much needed assistance.

The support of law reform is listed as one of the Foundation's objects in the statute under which it is constituted. In enabling the Law Reform Commission to carry on with its functions, the Law Foundation has truly fulfilled that object and rendered an important service to the people of the Province. Our particular thanks go to Marlene Scott, Q.C., past Chairman of the Foundation and Michael Jacobsen, its Executive Director.

D. SPECIAL ADVISORY COMMITTEE

Earlier in this Report we referred to the establishment of a Special Advisory Committee with respect to Floating Charges on Land. The members of that Committee are:

Professor Terry J. Wuester, Chairman
Hon. Mr. Justice B. Macdonald
Mary V. Newbury
Trevor Bell
B.W.F. Fodchuk
Robert W. Stuart
Mitchell Gropper
Dave F. Tysoe
J.P. Malcolm McAvity

The Commission is fortunate that this group of knowledgeable and uniquely qualified individuals agreed to serve on the Committee. We would like to express our gratitude to each member of the Committee for the time and effort which was devoted to this study. Our particular thanks go to the Committee Chairman, Professor Wuester for the very special contribution he made to the Committee's work.

E. CONTINUING LEGAL EDUCATION SOCIETY

Our earlier Annual Reports have referred to the closer relationship which has grown up between the Continuing Legal Education Society of British Columbia (C.L.E.) and the Law Reform Commission. A particular aspect of this relationship has been the continuing participation of Thomas G. Anderson, Counsel to the Law Reform Commission, in the work of C.L.E. In particular, he served on the editorial board for the development of a practice manual on family agreements and currently serves on the editorial board which is overseeing the production of a further practice manual on family law matters.

F. MINISTRY AND GOVERNMENT PERSONNEL

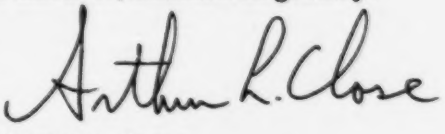
There are a number of individuals and agencies within Government who have in the past year, contributed to the work of the Commission.

The Law Reform Commission has always had a special relationship with the office of Legislative Counsel. Its personnel are invariably, within the limits of their resources,

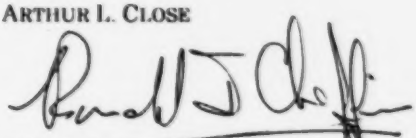
responsive and helpful when we request assistance in the preparation of proposed legislation. We particularly wish to thank Cliff Watt, Chief Legislative Counsel, and the other members of his office.

The Queen's Printer is responsible for printing our Reports. Its personnel bring a high level of skill, dedication and professionalism to the work they do for us and we are pleased to take this opportunity to thank them and acknowledge their important role.

Finally, we wish to thank the Attorney General and all those within his Ministry who, during the period under review, in their dealings with the Commission on a day-to-day basis have contributed to our work and made life easier. In particular our thanks go to The Honourable E. N. Hughes, Q.C., the Deputy Attorney General and various officers within the Information Services, Data Services, Financial Services and the Facilities Management divisions and units of the Ministry. All have, in one way or another, assisted us greatly.



ARTHUR L. CLOSE



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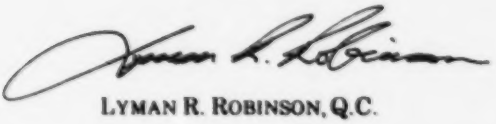
MARY V. NEWBURY



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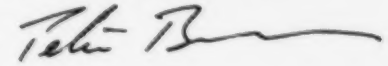

PETER T. BURNS, Q.C.

Appendix A

REPORTS AND RECOMMENDATIONS MADE BY THE LAW REFORM COMMISSION OF BRITISH COLUMBIA

No.	Title	Date	Recommendations Implemented in Whole or in Part by
1	Limitations--Abolition of Prescription*	Dec. 1970	*Land Registry (Amendment) Act, 1971*, S.B.C. 1971, c. 30, s. 8 (see now *Land Title Act*, R.S.B.C. 1979, c. 219, s. 24).
2	Annual Report, 1970*	Dec. 1970	Not applicable
3	Frustrated Contracts Legislation*	Feb. 1971	*Frustrated Contracts Act*, S.B.C. 1974, c. 37 (see now *Frustrated Contract Act*, R.S.B.C. 1979, c. 144); *Landlord and Tenant Act*, S.B.C. 1974, c. 45, s. 61(e) (see now *Residential Tenancy Act*, R.S.B.C. 1979, c. 365 s. 8(3)); *Commercial Tenancies Act*, R.S.B.C. 1960, c. 207, s. 34 (see now *Commercial Tenancy Act*, R.S.B.C. 1979, c. 54, s. 33).
4	Debt Collection and Collection Agents*	Mar. 1971	*Debt Collection Act*, S.B.C. 1973, c. 26 (see now *Debt Collection Act*, R.S.B.C. 1979, c. 88).
5	Expropriation*	Dec. 1971	*Expropriation Act*, S.B.C. 1987, c. 23.
6	Annual Report, 1971*	Dec. 1971	Not applicable
7	*Mechanics' Lien Act**	June 1972	*Builders Lien Amendment Act, 1984*, S.B.C. 1984, c. 16, s. 3 [in part]; *Builders Lien Amendment Act (No. 2), 1984*, S.B.C. 1984, c. 17, s. 1 [in part].
8	Deficiency Claims and Repossessions*	June 1972	*Conditional Sales Act*, S.B.C. 1973, c. 19 (see now *Sale of Goods on Condition Act*, R.S.B.C. 1979, c. 373); *Bills of Sale Act*, S.B.C. 1973, c. 7 (see now *Chattel Mortgage Act*, R.S.B.C. 1979, c. 48).
9	Legal Position of the Crown*	Dec. 1972	*Crown Proceedings Act*, S.B.C. 1974, c. 24 (see now *Crown Proceeding Act*, R.S.B.C. 1979, c. 86); *Interpretation Act*, S.B.C. 1974, c. 42, s. 13 (see now *Interpretation Act*, R.S.B.C. 1979, c. 206, s. 14).
10	Annual Report, 1972*	Dec. 1972	Not applicable

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
11	Interim Report on Evidence*	Feb. 1973	*Attorney-General Statutes Amendment Act, 1975*, S.B.C. 1975, c. 4, s. 6 (see now *Evidence Act*, R.S.B.C. 1979, c. 116, ss. 37, 38).
12	Pre-Judgment Interest*	May 1973	*Prejudgment Interest Act*, S.B.C. 1974, c. 65 (see now *Court Order Interest Act*, R.S.B.C. 1979, c. 76).
13	Landlord and Tenant--Residential Tenancies*	Dec. 1973	*Landlord and Tenant Act*, S.B.C. 1974, c. 45 (see now *Residential Tenancy Act*, S.B.C. 1984, c. 10.
14	Annual Report, 1973*	Jan. 1974	Not applicable
15	Limitations--General*	Mar. 1974	*Limitations Act*, S.B.C. 1975, c. 37 (see now *Limitation Act*, R.S.B.C. 1979, c. 236); *Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 6 [in part].
16	Costs of Accused on Acquittal*	June 1974	----
17	Procedure Before Statutory Bodies*	Nov. 1974	----
18	A Procedure for Judicial Review of the Actions of Statutory Bodies*	Dec. 1974	*Judicial Review Procedure Act*, S.B.C. 1976, c. 25 (see now *Judicial Review Procedure Act*, R.S.B.C. 1979, c. 209).
19	Annual Report, 1974*	Jan. 1975	Not applicable
20	Costs of Successful Unassisted Lay Litigants*	Apr. 1975	----
21	The Termination of Agencies*	Apr. 1975	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, s. 91 (see now *Power of Attorney Act*, R.S.B.C. 1979, c. 334, ss. 1-4); *Miscellaneous Statutes Amendment Act (No. 2), 1987*, S.B.C. 1987, c. 43, s. 104 (see now *Trustee Act*, R.S.B.C. 1979, c. 414, ss. 14(7), 14(11).
22	Powers of Attorney and Mental Incapacity*	May 1975	*Attorney-General Statutes Amendment Act, 1979*, S.B.C. 1979, c. 2, s. 52 (see now *Power of Attorney Act*, R.S.B.C. 1979, c. 334, s. 7).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
23	Personal Property Security*	Oct. 1975	----
24	Security Interests in Real Property: Remedies on Default*	Dec. 1975	*Miscellaneous Statutes (Court Rules) Amendment Act*, S.B.C. 1976, c. 33, s. 94(a) [in part] (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 16); Supreme Court Rules, Rule 50 (11), 3(2) [in part]; *Land Titles Act*, S.B.C. 1978, c. 25 [in part] (see now *Land Title Act*, R.S.B.C. 1979, c. 219, ss. 224-225); *Attorney General Statutes Amendment Act*, S.B.C. 1980, c. 1, s. 15 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 21.1) [in part]; *Property Law Act*, R.S.B.C. 1979, c. 340, s. 28 [in part]; *Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 5 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 16.1) [in part].
25	Annual Report, 1975*	Jan. 1976	Not applicable
26	Minors' Contracts*	Feb. 1976	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 1, 2, 10 (see now *Infants Act*, R.S.B.C. 1979, c. 196, Part 2.1 (ss. 16.1- 16.11)).
27	Extra-Judicial Use of Sworn Statements*	Apr. 1976	See, e.g., *Mineral Act, 1977*, S.B.C. 1977, c. 54, s. 20(2).
28	Rule in *Bain* v. *Fothergill**	June 1976	*Conveyancing and Law of Property Act*, S.B.C. 1978, c. 16, s. 33 (see now *Property Law Act*, R.S.B.C. 1979, c. 340, s. 33).
29	Annual Report, 1976*	Dec. 1976	Not applicable
30	The Rule in *Hollington* v. *Hewthorn**	Jan. 1977	*Evidence Amendment Act, 1977*, S.B.C. 1977, c. 70 (see now *Evidence Act*, R.S.B.C. 1979, c.116, ss. 15(3), 80, 81).
31	Waiver of Conditions Precedent in Contracts*	Apr. 1977	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 49).
32	Proof of Marriage in Civil Proceedings*	June 1977	*Attorney-General Statutes Amendment Act, 1979*, S.B.C. 1979, c. 2, s. 18 (see now *Evidence Act*, R.S.B.C. 1979, c. 116, s. 58).

* Report is out of print

No.	Title	Date	Recommendations Implemented in Whole or in Part by
33	The *Statute of Frauds**	June 1977	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 7, 8 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 54).
34	Tort Liability of Public Bodies*	June 1977	----
35	*Offences Against the Person Act, 1828*, Section 28*	Aug. 1977	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 3).
36	Annual Report, 1977	Jan. 1978	Not applicable
37	*Absconding Debtors Act* and *Bail Act*: Two Obsolete Acts*	Mar. 1978	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8, ss. 1, 2.
38	The *Replevin Act**	May 1978	*Rules of Court*, Rule 46 as amended Nov. 26, 1981 by B.C. Reg 467/81. *Attorney General Statutes Amendment Act, 1982*, S.B.C. 1982, c. 46, ss. 3-6, 25, 37-41.
39	The *Attachment of Debts Act**	Oct. 1978	----
40	Execution Against Land*	Oct. 1978	----
41	Annual Report, 1978	Jan. 1979	Not applicable
42	Creditor's Relief Legislation: A New Approach	Jan. 1979	----
43	Guarantees of Consumer Debts*	June 1979	*Consumer Protection Amendment Act, 1980*, S.B.C. 1980, c. 6, s. 3. [in part].
44	Parol Evidence Rule	Dec. 1979	----
45	Annual Report 1979 (Limitation Periods in Actions Against Estates)	Jan. 1980	*Attorney General Statutes Amendment Act, 1980*, S.B.C. 1980, c. 1, ss. 7, 17 (see now *Estate Administration Act*, R.S.B.C. 1979, c. 114, s. 66(4)(b); *Negligence Act*, R.S.B.C. 1979, c. 298, s. 7(3).
46	Civil Litigation in the Public Interest	June 1980	----

* Report is out of print

No.	Title	Date	Recommendations Implemented in Whole or in Part by
47	Calculation of Interest on Foreclosure	Sept. 1980	*Attorney General Statutes Amendment Act, 1981*, S.B.C. 1981, c. 10, s. 28 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 18.1).
48	The Recovery of Unauthorized Disbursements of Public Funds	Sept. 1980	*Financial Administration Act*, S.B.C. 1981, c. 15, s. 67.
49	Annual Report 1980 (Discount Rates)*	Jan. 1981	*Attorney General Statutes Amendment Act, 1981*, S.B.C. 1981, c. 10, s. 30 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 51).
50	Cable Television and Defamation	Mar. 1981	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 9 (see now *Libel and Slander Act*, R.S.B.C. 1979, c. 234, s. 1 ["broadcasting"]).
51	Benefits Conferred Under a Mistake of Law	Sept. 1981	----
52	The Making and Revocation of Wills	Sept. 1981	----
53	Distress for Rent	Nov. 1981	----
54	Annual Report 1981	Jan. 1982	Not applicable
55	Arbitration	May 1982	*Commercial Arbitration Act*, S.B.C. 1986, c. 3. *Foreign Arbitral Awards Act*, S.B.C. 1985, c. 74 [in part].
56	Presumptions of Survivorship	Nov. 1982	----
57	The Crown as Creditor: Priorities and Privileges	Nov. 1982	----
58	Interpretation of Wills	Nov. 1982	----
59	Interest and Jurisdictional Limits in the County and Provincial Courts [Printed as an Appendix to LRC 60]	July 1982	*Miscellaneous Statutes Amendment Act (No. 1), 1984*, S.B.C. 1984, c. 25, s. 63 (see now *Small Claim Act*, R.S.B.C. 1979, c. 387, s. 2(3); *Miscellaneous Statutes Amendment Act (No. 2), 1984*, S.B.C. 1984, c. 26, s. 2 (see now *County Court Act*, R.S.B.C. 1979, c. 72, s. 29(2)).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
60	Annual Report 1982	Jan. 1983	Not applicable
61	Standing of a Common Law Spouse to Apply Under the *Family Compensation Act* [Printed as an Appendix to LRC 73]	Jan. 1983	*Family Law Reform Amendments Act, 1985*, S.B.C. 1985, c. 72, s. 3 (see now *Family Compensation Act*, R.S.B.C. 1979, c. 120, s. 1).
62	Interspousal Immunity in Tort	Mar. 1983	*Charter of Rights Amendments Act, 1985*, S.B.C. 1985, c. 68, ss. 50-53, 79, 83, 98 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 55.
63	Peremptory Challenges in Civil Jury Trials	June 1983	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 3, 4 (see now *Jury Act*, R.S.B.C. 1979, c. 210, ss. 18, 18.1).
64	Breach of Promise of Marriage	Aug. 1983	*Family Law Reform Amendments Act, 1985*, S.B.C. 1985, c. 72, ss. 1, 36 (see now *Family Relations Act*, R.S.B.C. 1979, c. 121, s. 75).
65	Foreign Money Liabilities	Sept. 1983	----
66	Competing Rights to Mingled Property: Tracing and the Rule in *Clayton*'s Case	Sept. 1983	----
67	Bulk Sales Legislation	Oct. 1983	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 11 - 13.
68	Intentional Interference with Domestic Relations	Nov. 1983	*Family Law Reform Amendments Act, 1985*, S.B.C. 1985, c. 72, ss. 35, 37, 40 (see now *Family Relations Act*, R.S.B.C. 1979, c. 121, s. 75 [in part].
69	Illegal Transactions	Nov. 1983	----
70	Statutory Succession Rights	Dec. 1983	----
71	Minor (Interim) Report on the *Land (Wife Protection) Act* [Printed as an Appendix to LRC 73]	Jan. 1984	*Charter of Rights Amendments Act, 1985*, S.B.C. 1985, c. 68, ss. 61-78 (see now *Land (Spouse Protection) Act*, R.S.B.C. 1979, c. 223).

* Report is out of print

No.	Title	Date	Recommendations Implemented in Whole or in Part by
72	Minor Report on The Jurisdiction of Local Judges: Stays of Execution and Instalment Orders [Printed as an Appendix to LRC 73]	Feb. 1984	*Rules of Court*, Rule 42(25) as amended by B.C. Reg. 18/85, s. 15 (effective April 1, 1985).
73	Annual Report 1983/84	Apr. 1984	Not applicable
74	Covenants in Restraint of Trade	Apr. 1984	----
75	Review of Civil Jury Awards	Sept. 1984	----
76	Compensation for Non-Pecuniary Loss	Sept. 1984	----
77	Settlement Offers	Sept. 1984	*Rules of Court*, Rule 37(30) as enacted by B.C. Reg. 18/85, s. 10(b) [in part].
78	The Authority of a Guardian	Jan. 1985	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, ss. 22, 23 (see now *Family Relations Act*, R.S.B.C. 1979, c. 121, ss. 1, 25(2), 25(3)).
79	A Short Form General Power of Attorney [Printed as an Appendix to LRC 80]	Mar. 1985	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, ss. 92, 93 (see now *Power of Attorney Act*, R.S.B.C. 1979, c. 334, s.8 and Schedule).
80	Annual Report 1984/85	Apr. 1985	Not applicable
81	Performance Under Protest	May 1985	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, s. 52 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, ss. 57, 58).
82	Minor Report on the Domicile of a Minor [Printed as an Appendix to LRC 86]	Sept. 1985	----
83	Defamation*	Sept. 1985	----
84	Personal Liability Under a Mortgage or Agreement for Sale	Sept. 1985	----

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
85	Mortgages of Land: The Priority of Further Advances	Jan. 1986	----
86	Annual Report 1985/86	Apr. 1986	Not applicable
87	Spousal Agreements	Aug. 1986	----
88	Shared Liability	Aug. 1986	----
89	Action *Per Quod Servitium Amisit*	Nov. 1986	----
90	The *Court Order Interest Act*	Jan. 1987	----
91	Obsolete Remedies Against Estate Property: *Estate Administration Act*, Part 9	Mar. 1987	----
92	Annual Report 1986/87	Apr. 1987	Not applicable
93	The Buyer's Lien: A New Consumer Remedy	Aug. 1987	----
94	Fraudulent Conveyances and Preferences	Jan. 1988	----
95	Annual Report 1987/88	Apr. 1988	Not applicable

* Report is out of print.

Appendix B

MATTERS UNDER CONSIDERATION BY LAW REFORM COMMISSION OF BRITISH COLUMBIA

1. Debtor-Creditor Relationship Topics
   (a) Execution Against Shares
   (b) Set-Off
   (c) Enforcement of Foreign Judgments

2. Trusts and Estates Topics
   (a) Testamentary Intent and Unexpected Circumstances
   (b) *Land (Settled Estate) Act*
   (c) Trustee Investments
   (d) The Rule in *Howe* v. *Lord Dartmouth*

3. Contract Law Topics
   (a) Deeds and Seals
   (b) Mistake and Tender

4. Real Property Law Topics
   (a) Co-Ownership of Land
   (b) *Commercial Tenancy Act*
   (c) Joint Project on Land Title Law
   (d) Floating Charges on Land

5. Vicarious Liability under the *Motor Vehicle Act*

6. Periodic Payment of Personal Injury Awards

7. Extrinsic Aids to Statutory Interpretation

8. Family Property
   (a) The Status of Property Acquired Before Marriage and Inherited Property
   (b) The Division of Pension Rights on Marriage Breakdown

Appendix C

COMMISSION WORK REVIEWED AND CITED

Following is a partial list of reviews, articles, books, and cases in which the Commission's work has recently been referred to or discussed.

(a) Articles and Reviews

H.C. Alvarez, "The Role of Arbitration in Canada -- New Perspectives," (1987) 21 U.B.C. L. Rev. 247.

W.A. Bogart, "Developments in the Canadian Law of Standing," (1984) 3 Civ. J.Q. 339.

W.A. Bogart, "Review - Law Reform Commission of British Columbia, Report on the Crown as Creditor: Priorities and Privileges," (1984) 48 C.B.R. 181.

Bowles and Whalen, "Working Paper on Foreign Money Liabilities," (1982) 60 Can. B. Rev. 805.

Bowles and Whalen, "Compound Interest: Could Multipliers be the Way Forward?" (1986) 136 N.L.J. 876.

Bowles and Whalen, "The Law of Interest: Dawn of a New Era?" (1986) 64 Can. B. Rev. 142.

F.M. Catzman, "Law Reform Commission of British Columbia, Bulk Sales Legislation, Working Paper No. 40," (1983) 8 Can. Bus. L.J. 109.

B. Crawford, "The Legal Aspect of Money, 4th ed., by F.A. Mann," (1982-3) 7 Can. Bus. L.J. 368.

G.H.L. Fridman, "Law Reform Commission of British Columbia, Competing Rights to Mingled Property: Tracing and the Rule in Clayton's Case, Working Paper No. 36," (1982-83) 7 Can. Bus. L.J. 353.

G.H.L. Fridman and J.G. McLeod, *Restitution*, Toronto, The Carswell Company Limited, 1982 at 166 to 172.

F.W. Hansford, Book Review, "Restitution by G.H.L. Fridman and James G. McLeod, ...Unjust Enrichment by George B. Klippert..." (1984) 18 U.B.C.L. Rev. 177.

G.B. Klippert, *Unjust Enrichment*, Toronto, Butterworth's, 1983 at 152 to 156.

H.W.D. Lewis, Note on "Rule in *Bain* v. *Fothergill*," (1985) 135 N.L.J. 479.

J.K. Maxton, "Execution of Wills: The Formalities Considered," [1982] 1 Canterbury L. Rev. 393.

F. Meisel, "British Columbia Law Reform Commission Report on Arbitration," [1983] Civ. J.Q. 197.

F. Meisel, Note on "Settlement Offers," [1986] Civ. J.Q. 99.

D.S. Moir, "Review: Family Property: A Study Paper prepared for the Law Reform Commission of British Columbia" (1987) 6 Can. J. Fam. L. 145.

M.H. Ogilvie, Review, "Report on Covenants in Restraint of Trade. Law Reform Commission of British Columbia," (1985) 63 Can. B. Rev. 250.

S.A. Rae, "Inflation and the Law of Contracts and Torts," (1982) 14 Ottawa L. Rev. 465.

J. T. Robertson, "Judgment on the Covenant at Order Nisi--A Response to Judicial Opinion, Accepted Practice and the Law Reform Commission of British Columbia," (1987) 21 B.C.L. Rev. 1.

S. Schwartz "Review - Law Reform Commission of British Columbia, Report on Illegal Contracts," (1985) 10 Can. Bus. L.J. 83.

L.M. Sherwood, "Contracts - Illegality and Section 305.1 of the Criminal Code," (1983) 61 Can. B. Rev. 866.

W.M.B. Voroney, Case Comment on *Stevens* v. *Quinney*, (1980) 101 D.L.R. (3d) 289, [1979] 5 W.W.R. 284, (1980) 5 Sask. R. 219; (1980) 60 Can. B. Rev. 688.

S.M. Waddams, "Foreign Money Liabilities: Law Reform Commission of British Columbia, Working Paper No. 33," (1981-82) 6 Can. Bus. L.J. 352.

S.M. Waddams, "Law Reform Commission of British Columbia, Illegal Contracts, Working Paper No. 38," (1982-83) 7 Can. Bus. L.J. 361.

S.M. Waddams, "Compensation for Non-Pecuniary Loss: Is There a Case for Legislative Intervention?" (1985) 63 Can. B. Rev. 734.

D.M. Waters, "Trusts in the Setting of Business, Commerce and Bankruptcy," (1983) 21 Alta. L. Rev. 395.

B.H. Wildsmith, "Report on Civil Litigation in the Public Interest," (1982-83) 7 Dalhousie L.J. 463.

G. Williams, "Review: Law Reform Commission of British Columbia, Report on Spousal Agreements" (1987) 6 Can. J. Fam. L. 143.

(b) Cases

Acli Limited v. *Cominco Ltd.*, (1985) 61 B.C.L.R. 177 (B.C.C.A.).

Aktary v. *Dobroslavic*, (1984) 48 B.C.L.R. 26 (B.C.S.C.).

Air Canada v. *A.G.B.C.*, (1983) 41 B.C.L.R. 41 (B.C.S.C.).

Babb v. *Capital Business Machines Ltd.*, [1984] 5 W.W.R. 628 (Y.T.C.A.).

Borg-Warner Acceptance Canada Ltd. v. *Mercantile Bank of Canada and Peat Marwich & Mitchell*, (1985) 65 B.C.L.R. 1, [1985] 5 W.W.R. 605 (B.C.C.A.).

Canadian Imperial Bank of Commerce v. *Muntain*, [1985] 4 W.W.R. 90 (Co. Ct.).

David Grute & Sons Inc. v. *Conbrio Designs Ltd.*, [1982] B.C.D. Civ. 3463-05 (Co. Ct. Van.).

Exquisite Excavation Corp. v. *Exchequer Energy Resources Ltd.*, [1986] B.C.D. Civ. 1722-02 (B.C.C.A.).

First Western Capital Ltd. v. *Wardle*, (1984) 59 B.C.L.R. 309, 50 C.P.C. 318 (B.C.C.A.).

Imperial General Properties Ltd. v. *The Queen*, [1984] 1 F.C.R. 146 (F.C.T.D.).

Latchford v. *Farker*, [1984] B.C.D. Civ. 3579-04 (B.C.S.C.).

Lynden Transport Inc. v. *R. in Right of B.C.*, (1985) 62 B.C.L.R. 314 (B.C.S.C.).

McBeth v. *The Governors of Dalhousie College and University*, (1986) 10 C.P.C. 69 (N.S.S.C.).

Mackenzie Redi-Mix Co. v. *Miller Contracting Ltd.*, (1988) 20 B.C.L.R. 283 (B.C.C.A.).

Miller v. *First City Development Corp.*, (1987) 35 Bus. L. R. 278 (B.C.Co.Ct.).

Moore v. *Fordham*, (1985) 64 B.C.L.R. 394 (B.C.S.C.).

O.S.C. v. *Graymac Credit Corp.*, (1987) 23 E.T.R. 81 (Ont. C.A.).

Re Palmer; Schonwald v. *Cunningham*, (1985) 22 E.T.R. 8 (B.C.S.C.).

Pickering, v. *Deakin, Deakin, Dimmock & Topolite Distributors Ltd.*, [1985] 1 W.W.R. 289 (B.C.C.A.).

Price v. *Knutson and Lypchuk Estate*, [1987] 4 W.W.R 128 (B.C.C.A.).

R. in Right of B.C. v. *Yu*, (1984) 55 B.C.L.R. 329 (B.C.S.C.).

Rutherford Bazett & Co. v. *Penticton Pub Ltd.*, (1983) 50 B.C.L.R. 21, 41 C.P.C. 226, (B.C.S.C.).

Sehlstrom v. *Pich*, (1983) 36 C.P.C. 79 (B.C.S.C.).

Sur-Del Carpets and Rugs (M.R. Ltd. v. *Ciprut*, (1985) 64 B.C.L.R. 53 (Co. Ct. Van.).

Appendix D

PAST AND PRESENT MEMBERS OF THE COMMISSION

Hon. E.D. Fulton	Chairman	1970 to 1973
Hon. Mr. Justice F.U. Collier	Commissioner	1970 to 1971
Dr. Richard Gosse	Commissioner	1970 to 1972
Ronald C. Bray	Commissioner	1971 to 1977
	Acting Chairman	1973 to 1974
J. Noel Lyon	Commissioner	1972 to 1973
Allen A. Zysblat	Commissioner	1973 to 1976
Paul D.K. Fraser, Q.C.	Commissioner	1973 to 1979
Peter Fraser, Q.C.	Commissioner	1973 to 1982
	Acting Chairman	1978 to 1979
Leon Getz	Chairman	1974 to 1977
	Commissioner	1974 to 1979
Hon. Mr. Justice J.D. Lambert	Commissioner	1976 to 1978
	Chairman	1978
Kenneth C. Mackenzie	Commissioner	1978 to 1983
Bryan Williams, Q.C.	Commissioner	1979 to 1984
Anthony F. Sheppard	Commissioner	1979 to 1984
Arthur L. Close	Commissioner	1979 to date
	Vice-Chairman	1983 to 1984
	Chairman	1984 to date
Hon. Mr. Justice J.S. Aikins	Chairman	1980 to 1983
Hon. Ronald. I. Cheffins Q.C.	Commissioner	1983 to 1985
	Vice-Chairman	1984 to 1985
		1987 to date
Mary V. Newbury	Commissioner	1984 to date
Lyman R. Robinson, Q.C.	Commissioner	1985 to date
Peter T. Burns, Q.C.	Commissioner	1986 to date